

REMARKS

This is in response to the Office Action mailed on June 16, 2004, and the references cited therewith.

Claims 1, 22 and 23 are amended, claims 13-21 are canceled, and no claims have been added; as a result, claims 1-12 and 22-29 are now pending in this application.

§112 Rejection of the Claims

Claims 22-28 as amended now in Paper No. 13 were rejected under 35 USC § 112, first paragraph, for making reference to a “first” phase. The Applicant has amended claims 22 and 23 and removed reference to a “first” phase.

§103 Rejection of the Claims

Claims 1-12 and 22-29 as amended now in Paper No. 13 were rejected under 35 USC § 103(a) as being unpatentable over Esser (6,221,345, of record), Palinczar (4,724,139, of record), and Kasat et al. (5,424,070, of record) in view of Mecca (3,927,021, PTO-892) and Ross et al. (5,605,682, PTO-892). The Esser patent does not describe “A stable antiperspirant deodorant roll-on, spray, or wipable emulsion product, that does not break down under multiple cycles of heating and cooling’ as is claimed. The formulations described in the Esser patent are described as having use as roll-ons, not sprays or wipes.

The Emulgade SE material in the amended claim 1 includes “Glyceryl Stearate & Cetearth-20 & Cetearth-12 & Cetearyl Alcohol & Cetyl Palmitate.” Example 11 of the Esser patent does include Cetearth-20 but does not include any other ingredients claimed, such as coco-caprylate/caprate, Emulgade SE, glydcerin or allantoin. Furthermore, the formulation in clam 11 is not described as having application as a spray or a wipe. The formulation is not described as having stability under multiple cycles of heating and cooling. These features cannot be presumed to be inherent in the formulation of example 11 because the formulation described in example 11 does not include all of the elements claimed. Furthermore, example 11 describes “an antiperspirant composition suitable for a roll-on applicator” and does not describe the formulation as having use as a spray or wipe as is claimed. Support for the amended claim 1 is found in the table on page 9 of the application. As has been discussed in a previous rresponse,

the Palinczar and Kasat references discuss products which are different from what is claimed and different from the product described in example 11 of the Esser patent. The Examiner has not addressed the Applicant's position that these references cannot be combined and stands on the position that the Applicant cannot separately consider the references.

The Applicant asserts that it is a long standing principle of patent law that references must suggest combination, somewhere within the references, before they can be combined. The Applicant asserts that the references cited by the Examiner do not suggest combination because they are directed to dissimilar products with dissimilar formulations. The Applicant requests that the Examiner show support in each of the references cited for the assertion that the references can be combined. Furthermore, the Applicant asserts that even if the references are combined, what one gets is a hodgepodge of ingredients and products. Only by using the claims described herein can one make sense of it all.

Claim 6 includes, "a stable roll-on, spray or wipable antiperspirant deodorant emulsion, resistant to repeated cycles of heating and cooling, comprising:

a phase inversion temperature phase, consisting of: glyceryl stearate, ceteareth-20, cetyl palmitate, cetearyl alcohol, ceteareth-12, dicaprylyl ether, and coco-caprylate/caprate capable of forming droplets of water enclosing the emulsion when sprayed; and

an anti-perspirant wherein the stable antiperspirant deodorant roll-on, spray or wipable emulsion product is capable of forming droplets of water enclosing the emulsion."

The Esser patent does not describe a stable roll-on, spray or wipe that includes a PIT consisting of glyceryl stearate, ceteareth-20, cetyl palmitate, cetearyl alcohol, ceteareth-12, dicaprylyl ether, and coco-caprylate/caprate. The Esser patent does not describe any formulation capable of forming droplets of water enclosing the emulsion when sprayed and this feature cannot be presumed as inherent because the Esser patent does not describe this formulation. The combination of references does not render claim 6 obvious for reasons described above for claim 1.

Claim 22 is as follows: A wipe comprising:
a carrier having one or more of a cellulosic structure, a non-woven structure, foam or a combination of the cellulosic structure, foam, and non-woven structure; and

an antiperspirant emulsion capable of forming droplets of water enclosing the emulsion when sprayed, comprising:

a [first] phase, comprising a phase inversion temperature [phase] emulsion, comprising steareth-2, PPG 15 stearyl ether, and water;

a second, comprising water in a concentration of about 5 to 50%, wherein the combination of the first phase and the second phase forms a phase inversion temperature emulsion that does not break down under multiple cycles of heating and cooling; and

an antiperspirant, wherein the antiperspirant emulsion contacts the carrier.

Esser does not describe wipes at all. Furthermore, none of the other references cited describe wipes. None of the references cited describe the formulation claimed in claim 22. Because the combination of references cannot render claim 22 obvious.

Claim 23 is as follows: An antiperspirant deodorant stable spray emulsion product, comprising:

a spray emulsion capable of forming droplets of water enclosing the emulsion when sprayed, comprising:

a [first] phase, comprising a phase inversion temperature[phase] emulsion, comprising: an oil phase consisting of glyceryl stearate, cetareth-20, cetyl palmitate, cetaryl alcohol and cetareth-12, dicaprylyl ether, coco-caprylate/caprate, steareth-2, PPG 15, and stearyl ether, and a water phase;

a second phase, comprising water in a concentration of about 5 to 50% and glycerin, wherein the combination of the first phase and the second phase forms a phase inversion temperature emulsion that does not break down under multiple cycles of heating and cooling;

an antiperspirant; and

a container comprising a mechanism for delivering the emulsion as an aerosol.

Neither Esser nor any of the other references cited describe a spray that includes Cetareth-20 and the other ingredients claimed. Therefore, applicant asserts that the claim 23 is unobvious.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6976 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

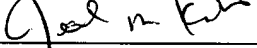
Respectfully submitted,

AMIT PATEL ET AL.

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Date 18 Oct. 04

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 18th day of October, 2004.



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